4676/06

Filed on 31/1/2006

by Shri Anil Khare Advocate

31/1/2006

R.B.D.R.(J)

(3)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(C.G.)

Criminal Misc. Cr. Petition No. 147 OF 2006

(Petition Under Section 482 of Criminal Procedure Code)

PETITIONER : Smt. Meena Gupta,Wife of Radha Raman Gupta, aged about 41 years,Occupation-service(Teacher) Government Primary school,Kaseeya Police Station-Gharghoda District-Raigarh(C.G.)

RECEIVED-COPY 31/1/06 CLERK to A. G. BILASPUR

VERSUS

RESPONDENT : State of Chhattisgarh,through the District Magistrate,Raigarh(C.G.)

PETITION UNDER SECTION 482 CODE OF CRIMINAL PROCEDURE

XI-HC-22

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Q.M.P. 147/06 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

21.02.2007

Shri Awadh Tripathi, Counsel for the applicant.

Shri G.K. Beriwal, Dy. Advocate General for the State.

Heard on admission..

This is a petition filed under Section 482 of the Code of Criminal Procedure against the order dated 14/3/2005 passed by the Second Additional Sessions Judge, Raigarh (C.G.) in Criminal Revision No.191/2004. The aforesaid Criminal Revision was filed against the order dated 19/7/2004 passed by the Judicial Magistrate First Class, Gharghoda in Criminal Case No.542/2003.

It appears that a Criminal Case under Section 174 of IPC was filed against the applicant making allegations that she has failed to make her attendance in compliance of the notice issued to her during the course of investigation of certain offence. In the said criminal proceedings, the applicant filed an application for dismissal of the case and she also filed an application under Section 91 of the Code of Criminal Procedure for calling the records of Criminal Case No.240/2002, in which, the charge sheet was filed against the applicant under Sections 500 and 509 of IPC. The proceedings were prayed to be quashed on the ground that for the alleged commission of the main offence, Criminal Case No.240/2002 under Sections 500 and 509 of IPC is also pending and this subsequent criminal case is a repetition on the alleged act said to have been committed during the course of enquiry proceedings of the earlier crime registered with the Police.

An application under Section 91 of Cr.P.C. was filed on the ground that if the records of Criminal Case No.240/2002 would be called, it will

(पीछे देखिये)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.M.P.147/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

make clear all things and further there would be no necessity of prosecution of this case, because all formalities have been shown in that case.

Learned Magistrate dismissed the aforesaid application by order dated 19/7/2004 saying that the proceedings of Criminal Case No.240/2002 is of different nature and this proceeding under Section 174 of IPC is of different nature, as the same is for alleged contravention of non-compliance of the notice issued to the accused/applicant. So far as the application under Section 91 of Cr.P.C. is concerned, learned Magistrate recorded a finding that there is no necessity of calling that criminal proceeding because it has no relevance with the facts of this case.

Against the said order of dismissal of these two applications, the aforesaid Criminal Revision was filed, which was dismissed by the Sessions Court. It is against that order; this petition has been filed by the petitioner.

Admittedly, a Criminal Case vide No.240/2002 is pending against the applicant under Sections 500 and 509 of IPC and that case has to be decided on its own merit. This matter under Section 174 of IPC has been filed on the alleged breach committed by the applicant by not attending and responding to the notice issued to her for the purpose of investigation in the aforesaid crime, for which, ultimately, the charge sheet was filed and Criminal Case No.240/2002 was registered.

Needless to say that this case under Section 174 of IPC vide No. 542/2003 is totally on a different footing and this has no connection with the earlier Criminal Case. The causesof actions of both the cases are

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आदेश पत्रक

मामला क्रमांक Cr.M.P-1427/06 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

entirely different and this subsequent Criminal Case for the alleged breach of not attending/responding to the notice during the course of investigation cannot be quashed on the ground that in Criminal Case for the mother offence, the investigation was done and is already pending before the Court.

The Courts below have rightly taken this view that these are the two independent proceedings and have rightly rejected the contentions of the applicant.

So far as application under Section 91 of Cr.P.C. for calling the records of Criminal Case No.240/2002 is concerned, I do not find any reason to say that those records would be relevant for dismissal of this subsequent Criminal Case. Moreover, if some documents of the said Criminal Case are required for this case, the applicant is well within the rights to obtain the copies of those documents and file the same in Criminal Case. No.542/2003.

The Courts below have rightly taken this view that the entire record of that Criminal Case was not required for the decision of this subsequent Criminal Case, which is based on altogether a different cause of action.

There appears to be no illegality or irregularity in the orders passed by the two Courts below warranting interference under Section 482 of the Code of Criminal Procedure.

The petition has not merit and the same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

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